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TO: Ingrid Rosencrantz
Teena Wooten

FROM: Marci Kinter, Screenprinting and Graphic Imaging Association
International
Fern Abrams, IPC –the Association Connecting Electronics
Industries
Dave Darling, National Paints and Coatings Association

RE: Regulatory Options for the Definition of Solid Waste Proposal

Thank you once again for the opportunity to meet with you yesterday to discuss the progress of the proposed rule on the Definition of Solid Waste. As small businesses, we are supportive of your efforts to move the rule forward in a timely manner. However, we are concerned that the use of the four-digit NAICS code will severely limit the applicability of any changes proposed, especially for small businesses. Due to limited staff and space, small businesses do not have the ability to effectively incorporate ancillary material recycling operations. As we discussed, extensive materials reuse opportunities exist within industries dominated by small businesses. A broader application of the proposed regulatory reforms would provide enhanced opportunities for environmental benefit.

It is our understanding, based on discussions at the August 27th meeting, that the Agency is intending to offer a proposal that will seek to define "discard" based on a jurisdictional viewpoint. The viewpoint adopted by the Agency focuses on "continuous industrial process within the same generating industry." The Agency proposes to define the "same generating industry" by four digit NAICS codes. The NAICS system was developed by the Bureau of Census for the gathering of economic data and is not the appropriate tool for environmental regulation. For a large portion of the manufacturing base, especially for small businesses, the use of the NAICS system to define generating industry removes any likelihood of realizing any environmental benefit.

In our opinion, the "same generating industry" naturally includes the supplier base associated with each industry sector. Due to the specificity of the NAICS system, it is very difficult to accomplish material reuse within the same NAICS code. Many manufacturing sectors have natural supply chains that are not recognized by the NAICS system. Reliance upon the NAICS system for a generating industry definition would interfere with product stewardship systems that are developing through manufacturing supply chains. Inclusion of industry supply chains within the definition of generating industry definition would allow spent materials to be returned to the supply chain for beneficial reuse that replaces virgin materials.

Each industry sector has identifiable supply chains. These suppliers provide the raw materials that are necessary to the production of the product in question. Depending upon the industry, raw materials may include chemicals, solvents, inks, and metals. Many of the waste by-products and spent materials generated during the manufacturing process can be reused as a legitimate ingredient in the manufacture of other products that are in turn provided to the industry for use in production.

We encourage the Agency to include a discussion on this topic as a regulatory option in the forthcoming proposal. Such a proposal might include discussion on the following key issues.

- Definition of an industry sector that includes its supply chain.
- Spent materials must be used within the supply chain as a legitimate ingredient replacing virgin materials.
- Materials returned to their supply chain for reuse have economic value and therefore resemble commodities more than wastes.
- Materials that are properly containerized and labeled when stored or shipped prior to reuse resemble commodities. Materials held in conditions that safeguard against loss are more likely to be regarded as valuable commodities destined for legitimate recycling.
- If spent materials are stored in a building with a roof, floor and walls; or if not stored in a building, they must be stored in a container that is constructed, filled and closed to prevent identifiable releases to the environment; and if containers are clearly marked as to their contents then they would be considered commodities.

Cc: Karen Brown, US EPA Small Business Ombudsman
Office of Policy, Economics and Innovation
Matt Strauss, Office of Solid Waste and Emergency Response